

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0433 RST

Use Tax

Calendar Year 1995

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ISSUE

I. Use Tax – Agricultural Equipment Exemption

Authority: 45 IAC 2.2-5-6; 45 IAC 2.2-3-4; IC 6-2.5-5-2

Taxpayer protests the assessment of use tax on the purchase of an ATM Gator Utility Vehicle.

Based upon the examination of the assessment and the protested issue(s), the Department will adjust the billing.

The taxpayer protests the Department's assessment of use tax on a 4-wheel drive, six wheel ATM Gator Utility Vehicle and has provided a breakdown by percentage of its use as follows:

- (a) Daily-75% hauling hay, minerals, and grain for feeding livestock
- (b) 5% for hauling tools and supplies to maintain machinery and facilities
- (c) 5% for hauling fuel and oil to equipment during planting and harvesting
- (d) 5% for hauling seeds and fertilizer for crop production
- (e) 10% for towing wagons, rakes, and other equipment to and from fields during harvest.

45 IAC 2.2-5-3 (b) states:

In general purchases of tangible personal property by farmers is taxable. The exemptions provided by this regulation [45 IAC 2.2] apply only to seeds, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food and by the farmer in the direct production of food and agricultural commodities. This exemption is limited to "farmers."

45 IAC 2.2-5-3(d)(8) states that transportation of animals, poultry, feed fertilizer, etc. to the farm for use on farming; is taxable.

45 IAC 2.2-5-4(c) does not allow exemption for graders, ditches, front and loaders, or similar equipment (except equipment to haul animal waste).

45 IAC 2.2-5-4(e) further states:

The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

45 IAC 2.2-5-3(d)(4) exempts

Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.

45 IAC 2.2-5-3(d)(9) exempts

Equipment designed to haul waste

Taxpayer states the ATM four wheel drive vehicle is used totally off road and in direct support of the farming operation; it also is not a recreational nor sport vehicle. The ATM has a load capacity of 1000 lbs. and a towing capacity of over 3000 lbs and reduces the use of a tractor or pick up truck.

45 IAC 2.2-5-3(d)(7) states:

Tangible personal property purchased by a farmer for use in general farm maintenance of taxable items is taxable.

45 IAC 2.2-5-4(c) taxes all tools including forks, shovels, hoes, welders, power tools, and hand tools; graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).

The Department contends that only one activity listed would qualify for the agricultural exemption. Specifically, 45 IAC 2.2-5-6 grants an exemption for equipment used to apply such items as seed (45 IAC 2.2-5-6(d)(2)) fertilizer [45 IAC 2.2-5-6(d)(3)], and insecticides and fungicides [45 IAC 2.2-5-6(d)(4)] to fields or crops. The other activities listed, while helpful and important to a successful farming operation, would not qualify for exemption.

The taxpayer's protest is sustained in part and denied in part. The use tax should apply only to that portion of the assessment that pertains to uses (performed by the ATM) that would not qualify for the agricultural exemption. Consequently the taxpayer is obligated to pay ninety five percent of the original tax assessment, plus penalty and interest.

FINDINGS

The taxpayer's protest is sustained in part and denied in part.